

## CLAIMS: THE CASE OF GEORGE D. EMERY COMPANY

*Protocol of agreement and supplementary protocol signed at Washington May 25, 1909; protocol of settlement signed at Washington September 18, 1909*

*Protocol of agreement and supplementary protocol entered into force May 25, 1909*

*Protocol of agreement terminated September 18, 1909, in accordance with article IX*

1909 For. Rel. 460; Treaty Series 532½

CLAIM OF THE GEORGE D. EMERY CO., AN AMERICAN CORPORATION,  
v. NICARAGUA

### PROTOCOL OF AGREEMENT

The United States of America and the Republic of Nicaragua through their respective plenipotentiaries, Philander C. Knox, Secretary of State of the United States of America, and Señor Doctor Don Pedro Gonzales, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Nicaragua on Special Mission, being duly authorized thereto, and Señor Doctor Don Rodolfo Espinosa, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the United States, have agreed upon and concluded the following protocol:

Whereas, the United States of America, on behalf of the George D. Emery Company, an American corporation, claims that the annulment by the Government of Nicaragua of a certain concession granted by said Government to one Herbert C. Emery, and by him assigned to said George D. Emery Company, was contrary to law and in contravention of the rights of said corporation, under its concession; and

Whereas, the Republic of Nicaragua maintains both the legality and justice of such annulment, and

Whereas, the two Governments have concluded to submit the determination of the controversy to arbitration it is therefore agreed as follows:

## ARTICLE I

The High Contracting parties will submit to an international tribunal of arbitration, for decision, the questions hereinafter stated in their order, namely:

1. Whether by the decision of June 11th, 1903, rendered by the arbitrators provided for in the concession, said concession was annulled.

2. Whether (a) the annulment of said concession by the Nicaraguan Government; (b) the proceedings and judgment of the Nicaraguan courts for 500,000 silver dollars and the embargo of the property of said corporation and the interference with the work and business of said corporation by the Nicaraguan Government; (c) the sale by the Nicaraguan Government by contract of May 18th, 1905, to Angel Caligaris of forty thousand hectares of national lands in the Department of Zelaya; (d) the grant by the Nicaraguan Government to Lomax S. Anderson of the concession dated February 7th, 1906, were in contravention of the rights of said corporation and of the principles of equity and international law.

If the arbitral tribunal find in the affirmative on any of the foregoing questions contained in Clause 2 of this article, they shall then assess and award damages against the Nicaraguan Government to cover whatever loss, damages, costs and expenses, if any, said corporation has suffered and incurred by reason of such act or acts in contravention of justice, equity and international law; it being understood that for the purposes of any arbitral assessment of damages the Government of the United States recognizes the right of the Government of Nicaragua to set off by way of reduction of damages any counterclaims against the Company.

## ARTICLE II

Any award that the tribunal may render against said Nicaraguan Government shall be payable in United States gold and shall include interest at the rate of six per cent per annum on all losses or damages from the time they occurred until the award is fully paid.

## ARTICLE III

The said questions shall be referred to a tribunal composed of three arbitrators, one to be named by the President of the United States, and one by the President of Nicaragua, at or before the time of signing this protocol, and the third, who shall be one learned in the law and able to speak, write and understand the English language, to be selected by mutual accord between the two first named arbitrators. In the event no selection of the third arbitrator is made within thirty days after the signing of this protocol, then such third arbitrator, who shall be a citizen of neither the United States nor Nicaragua, is to be selected by the King of Great Britain.

In case of death, absence or incapacity of any arbitrator, or in the event of his ceasing or omitting to act the vacancy shall within thirty days be filled in the same manner as the original appointment, the period of thirty days to be calculated from the date of the happening of the vacancy.

#### ARTICLE IV

Within sixty days from the date of the signing of this protocol, the Government of the United States, through the Department of State, shall furnish to the Government of Nicaragua, through its Legation at Washington, and to each arbitrator a copy of its case, stating therein all the claims of the George D. Emery Company against the Government of Nicaragua, together with all correspondence between the two Governments and between said corporation and each of said Governments, respectively, and also all documents, affidavits and other evidence in its possession in relation to the case.

Within sixty days from the signing of this protocol, the Government of Nicaragua, through its Legation at Washington, shall furnish to the Government of the United States through the Department of State, and to each arbitrator a copy of its case, stating therein all its claims against the George D. Emery Company, together with copies of all correspondence between the two Governments and between said corporation and the Government of Nicaragua, respectively, as well as all documents, affidavits and other evidence in its possession in relation to the case.

Within sixty days after filing such cases and the accompanying evidence, each Government shall in the same manner furnish to the other Government and to each arbitrator its counter-case, which shall contain only answers in defense to the other's case, and shall admit of no other charges against each other.

Such counter-cases shall be accompanied with copies of all documents, affidavits and other evidence in support thereof.

The period for submission of evidence shall thereupon be closed; provided that the tribunal may, however, allow or require either Government to furnish such additional evidence as may be deemed necessary, in the interest of justice.

The tribunal shall be at liberty to employ for its information all manner of documents and statements which it shall consider necessary, without being bound by strict judicial rules of evidence.

#### ARTICLE V

The arbitrators shall organize and hold their first session in the City of Washington, District of Columbia, U. S. A., as soon as practicable, within one month following the filing of the counter-cases, and shall subscribe as their first act a solemn declaration to examine, consider and decide the ques-

tions submitted to them in accordance with justice and equity and the principles of international law. The concurrent action of any two arbitrators shall be adequate for a decision on all matters and questions submitted to the arbitral tribunal.

#### ARTICLE VI

The arbitrators shall establish such rules of procedure as they may deem expedient, and shall hear one person as agent on behalf of each Government, and consider such arguments, written or oral, as said agent may present, and may with the consent of either agent hear other counsel on the side such agent represents.

#### ARTICLE VII

The arbitrators shall decide the case by taking into consideration every circumstance connected with the Emery concession, the diplomatic correspondence between the two Governments relative thereto, and such documents and other evidence as may be submitted to them by the High Contracting Parties, or as may be required by the Tribunal. Their decision shall be final and conclusive, and shall be rendered within thirty days from the date of the first meeting, unless deferred by the tribunal for the purpose either of allowing or requiring further evidence, or of filling a vacancy in the tribunal.

#### ARTICLE VIII

Reasonable compensation to the arbitrators for their services and all expenses incident to the arbitration, including the cost of such clerical aid as may be necessary to and be appointed by the tribunal, shall be paid by the two Governments in equal moieties.

#### ARTICLE IX

It is furthermore mutually agreed by the Contracting Parties that the Government of Nicaragua reserves the right at any time within four months after the signature of this protocol to negotiate for a settlement directly with the Company, and it is understood that if within the said months such settlement is made, approved by the Government of the United States and definitively consummated, the arbitration herein provided for will not be carried out.

IN WITNESS WHEREOF, the respective plenipotentiaries of the two Governments have signed and sealed the present protocol in duplicate in the English and Spanish languages.

DONE at Washington, this twenty-fifth day of May, in the year 1909.

PHILANDER C. KNOX	[SEAL]
PEDRO GONZÁLES	[SEAL]
RODOLFO ESPINOSA	[SEAL]

*Supplementary Protocol*

The United States of America and the Republic of Nicaragua, through their respective Plenipotentiaries, Philander C. Knox, Secretary of State of the United States of America, and Señor Doctor Don Pedro Gonzales, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Nicaragua on Special Mission, being duly authorized thereto, and Señor Doctor Don Rodolfo Espinosa, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Nicaragua to the United States, have agreed upon and concluded the following protocol supplementary to the protocol signed this day for the submission to arbitration of the Emery case.

## SOLE ARTICLE

It is understood and agreed between the High Contracting Parties that for the purposes of arbitration provided for in the protocol signed this day submitting to arbitration the claim of the George D. Emery Company against the Government of Nicaragua, all the dates and periods of time therein indicated, except the period provided for in Article IX, shall for the purposes of such arbitration and for the preparation therefor be computed as if the said protocol of arbitration had been signed four months from this date.

IN WITNESS WHEREOF, the respective plenipotentiaries of the two Governments have signed and sealed the present Supplementary Protocol in duplicate in the English and Spanish languages.

DONE at Washington, this twenty-fifth day of May in the year nineteen hundred and nine.

PHILANDER C. KNOX [SEAL]

PEDRO GONZÁLES [SEAL]

RODOLFO ESPINOSA [SEAL]

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*Protocol of Settlement*

THE UNITED STATES OF AMERICA and the REPUBLIC OF NICARAGUA through their respective plenipotentiaries, Alvey A. Adee, Acting Secretary of State of the United States of America, and Señor Doctor Pedro Gonzales, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Nicaragua on Special Mission, duly authorized thereto, and Señor Doctor Don Rodolfo Espinosa, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the United States, have agreed upon and signed the following protocol of settlement:

WHEREAS under a certain protocol between the United States of America and the Republic of Nicaragua, signed at Washington on the 25th day of

May, 1909, it was agreed that the claim of the George D. Emery Company, an American corporation, against the Republic of Nicaragua, should be submitted to the jurisdiction and adjudication of an arbitration tribunal composed of three arbitrators; and,

WHEREAS it was provided in Article IX of said protocol that the Government of Nicaragua reserved the right at any time within four months after the signature of said protocol to negotiate with said company for a settlement of all difficulties existing between them, it being understood that if within the said four months such settlement were made, approved by the Government of the United States, and definitely consummated, that then and in that event the arbitration provided for in said protocol should not be carried out; now

THEREFORE, the respective governments, animated by the spirit of sincere friendship that should exist between the two nations, and actuated by the firmest desire to maintain and continue the good understanding which should exist and increase between them, and to the end of avoiding all possible future differences regarding this matter and of settling existing differences concerning said claim by common accord instead of further proceedings under the said protocol, and in pursuance of the express provision of Article IX of said protocol as above set forth, have now reached an amicable arrangement and settlement of the said claim and have agreed to and do settle the same in the manner and form hereinafter stated:

#### ARTICLE I

The United States of America for and in behalf of the George D. Emery Company hereby sells, sets over, and assigns to the Republic of Nicaragua forever all the right, title and interest of the George D. Emery Company in, to, and under the following described property and releases the following claims:

1. A certain timber concession granted to Herbert Clark Emery on July 27, 1894, as well as certain modifications of said concession granted to said Herbert Clark Emery on May 5, 1898 and on August 11, 1900, and by him assigned to the George D. Emery Company, it being understood that all operations under this concession shall cease and determine from and upon the date of the signing of this agreement, provided that this shall not effect the rights of the George D. Emery Company to remove under the conditions hereinafter set forth in this agreement, all timber which, prior to the date of this agreement, the Emery Company has felled.

2. The plant and equipment owned by the George D. Emery Company and located within the territory of the Republic of Nicaragua, including the steamers *Yulu*, *Pioneer*, the launch *Yamni*, the schooner *Atlantic* and all small boats, together with all railroads, tram-roads, and their equipment, all cattle, tools, and working outfit of camps, work expended in the woods, and all other assets within said territory not herein enumerated but belonging to

said company, all said equipment and boats to be delivered to the Government of Nicaragua on or before May 18, 1910, said equipment and boats when so delivered to be in as good condition as they are upon the date of the signing of this protocol of settlement, necessary wear and tear excepted, the Emery Company hereby undertaking and agreeing to execute to the Government of Nicaragua bills of sale for all personal property transferred by said Company to said Government under the terms of this protocol, and said Company also agreeing that for a period of eight months, or until said boat shall on or before the expiration of said period of eight months be delivered to the Government of Nicaragua, it will insure the steamer *Yulu* for the sum of Thirty-five thousand dollars (\$35,000), United States Gold, and will assign and deliver the policy to said Government of Nicaragua.

3. All damages of whatsoever name or nature which the George D. Emery Company has suffered or claim to have suffered by reason of any interference, lawful or unlawful, with its operations by the Government of Nicaragua or any of its officials, or by reason of any interruption, lawful or unlawful, of its work by said government or any of its officials.

## ARTICLE II

In consideration of the above premises and for a full, complete and final settlement of all claims of whatsoever name or nature made by the George D. Emery Company against the Government of Nicaragua, and in full and complete payment of all property sold and transferred by this instrument to the Government of Nicaragua by the George D. Emery Company, the Government of Nicaragua promises and agrees:

1. To pay to the United States of America the sum of Six Hundred Thousand Dollars (\$600,000) in gold coin of the United States of America of the present standard of weight and fineness at the office of the Secretary of State, Washington, D.C., in the United States of America, in the following installments and at the following times, namely: Fifty thousand dollars (\$50,000) in thirty (30) days, Fifty thousand dollars (\$50,000) in ninety (90) days, Fifty thousand dollars (\$50,000) in one hundred eighty (180) days, One hundred thousand dollars (\$100,000) in one (1) year, One hundred thousand dollars (\$100,000) in two (2) years, One hundred thousand dollars (\$100,000) in three (3) years, One hundred thousand dollars (\$100,000) in four (4) years, and Fifty thousand dollars (\$50,000) in five (5) years, after the date of the signing of this protocol, the last four of said installments to bear interest beginning one year from the date of the signing of this protocol at the rate of five per cent (5%) per annum, payable annually.

2. The Government of Nicaragua hereby releases all its claims of whatsoever name or nature which it has against the George D. Emery Company no matter upon what act or acts or omissions said claim for damages may be

based, the Government of Nicaragua hereby acknowledging itself fully paid and compensated for all such damages of all kinds and descriptions.

3. The Government of Nicaragua hereby agrees to dismiss or cause to be dismissed all suits now pending in the courts of Nicaragua on the part of said government against the George D. Emery Company, and to cause all judgments heretofore secured against said Company by said Government to be set aside.

4. The Government of Nicaragua hereby grants to the said George D. Emery Company the full right and privilege to export from Nicaragua all timbers which the said George D. Emery Company has felled prior to the date of the signing of this protocol of settlement, it being agreed and understood that all timber exported in accordance with this agreement shall be free from the duty of one dollar (\$1.00) per log, provided for in the above-named Emery concession, and further that the said company shall not be required to pay the ten thousand dollars (\$10,000) annually due the Government, nor any part thereof, as provided in said concession.

5. The Government of Nicaragua hereby undertakes that local municipal taxes of all kinds to which the George D. Emery Company may be subjected shall not be different or other than those hitherto imposed upon the company, and that under no circumstances or upon no excuse shall said taxes be increased or be made payable at any other place, nor in any other currency than those levied or provided by said local authorities at the date of the signing of this protocol of settlement.

6. The Government of Nicaragua undertakes that it will not, prior to May 18, 1910, increase with reference to the Emery Company, the present import duties levied by the Government of Nicaragua upon the articles specified in the Emery concession as entitled to entrance duty free, nor will it change the kind or nature of said duties, nor make them payable at a different place or in a different currency from that which they are now paid by importers generally.

7. The Government of Nicaragua hereby grants to the George D. Emery Company, its officers and employees, for a period of eight months or until May 18, 1910 —; (a) free access to all parts of the territory of Nicaragua covered by the concession of the George D. Emery Company; (b) the right to remove from said territory during the period above specified and under the provisions above set forth, all timber which the George D. Emery Company has felled prior to the date of this instrument; (c) the right to the free, undisturbed and unimpeded use of the entire plant and equipment, free of all charges, including the boats *S. S. Yulu*, steam tug *Pioneer* and Schooner *Atlantic*, by this document sold, assigned and transferred to the Government of Nicaragua, for a period of eight months from the date of this protocol of settlement or until the same shall on or before the expiration of the said period of eight months be delivered to the Government of Nica-



ragua by said Company, said plant and equipment to be used only in connection with the winding up of the Company's business in Nicaragua, as set forth and provided for in this protocol of settlement, *Provided* that it is expressly understood that for a period of eight months (unless sooner delivered), the Emery Company shall be permitted to use the boats *Yulu*, *Pioneer* and *Atlantic* in connection with its business in British and Spanish Honduras and Colombia, and *Provided further* that in case the said Emery Company shall use the steamer *Pioneer* or the schooner *Atlantic* or both in connection with any other work than that of winding up its business in Nicaragua, the Emery Company shall be liable for all loss or damage occurring during such use, the total value of either or both of said boats, in case of loss or damage, to be estimated at the sum or sums named as the value of such boat or boats in the inventory of the Emery Company.

9.<sup>1</sup> The Government of Nicaragua agrees and undertakes that within fifteen days of written notification thereto by the said George D. Emery Company or its representatives, the said Government or its duly authorized representative will receive, accept and take charge of all such parts of the plant and equipment of the said Company as said Company may indicate its readiness to surrender, as provided in this protocol, and that in the event the said Government or its duly authorized representative fails to accept, take charge of, and receive all or any parts of said plant and equipment within fifteen days from the date of notification as above specified, that then and in that event the George D. Emery Company shall be relieved from all responsibility for the further safe and proper keeping and maintenance of said property thus notified to be delivered.

In witness whereof, the undersigned have hereunto set their hands and seals this eighteenth day of September, 1909.

ALVEY A. ADEE	[SEAL]
PEDRO GONZÁLES	[SEAL]
RODOLFO ESPINOSA	[SEAL]

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<sup>1</sup> Paragraph 8 does not appear in the original. This paragraph was probably inadvertently numbered 9.